IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.480 OF 2006

M.M.Shah Consultants Ltd. & Anr. .. Petitioners.
Vs.
Dr.Narendra Someshwar Bhatt & Anr. .. Respondents.

Mr.A.P.Mundargi i/b G.H.Keluskar with Pooja Pagedar for the petitioners.
Mr.Vaibhav Krishna i/b Juris Counsillis for respondent no.1.
Mr.S.V.More A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 14TH JULY, 2006

P.C.:

. Heard learned counsel for the petitioners and respondent no.1 and learned A.P.P. for the State.

2. By this petition, the petitioner has prayed for quashing and setting aside the order dated 24.9.2002 passed by the Judicial Magistrate, First Class, Pune Court No.8, below Exhibit-1 in Regular Criminal Case No.157/2003 and the judgment and order dated 19.11.2005 passed by the III Additional Sessions Judge, Pune in criminal revision application no.18 of 2005 filed by the petitioners and has further prayed for dismissal of the complaint filed by the respondent-complainant. By order dated 24.9.2003 the

Magistrate had issued process and that was challenged in the revision which came to be dismissed by the order dated 19.11.2005. I perused the complaint and the impugned orders as also the reply affidavit and the correspondence annexed thereto. It is clear from the averments in the complaint that the complainant had paid Rs.10,65,000/- between 17.9.1999 and 5.9.2001. The amount was paid to purchase a residential plot in residential colony to be developed on C.S.no.87/A-3, Aundh, Pune. Admittedly, the property is owned by Walchandnagar Industries Ltd. The correspondence annexed to the reply affidavit shows that the petitioner-accused had agreed to transfer 511 sq. mtrs. and/or 5600 sq. ft. or thereabout area in the proposed residential colony for which the complainant had to make payment at the rate of Rs.200/- per sq. ft. of the plot area. The complainant had accordingly made the payment from time to time to the petitioner-accused. In the letter dated 17.7.1999, the petitioner-accused had also made it clear that for any reason if the development did not start within two years of the letter, the entire amount paid in the proposed colony would be refunded with bank interest. It appears that the proposal of the development did not materialise. Having so realised the complainant after four years demanded the amount deposited by him inasmuch as the property was

not developed as stated in the letter dated 17.9.1999. The respondent-accused in reply to the notice of demand not only changed his stand in respect of the development of property but also emphatically denied to have received Rs.10,65,000/- and, therefore, refused to refund the said amount. In the letter dated 17.9.1999 the accused had informed the complainant that the development would be undertaken by D.Y.Patil or by the accused. In letter dated 6.10.1999 it was stated that development would be undertaken by D.Y.Patil Educational Trust or by D.Y.Patil Trekking. And in reply dated 29.11.2002, to the notice of the complainant dated 11.11.2002, the accused denied emphatically that they ever represented the complainant that the development would be undertaken by D.Y.Patil Trust or D.Y.Patil Trekking. From perusal of the papers it is clear that the amount was paid by cheques and it was received by the accused. It is also clear from the other material such as a copy of the plaint filed by the accused against Walchandnagar Industries Ltd. that when the amounts were paid by the complainant, the property on which the said development was to take place had not been purchased by the accused. The negotiations for alienation only were going on and that was suppressed by the petitioner-accused from the complainant. The complainant was represented that the property has

already been transferred by Walchandnagar Industries Ltd. Prima facie, I am satisfied, from the material placed before me, that the petitioner induced the complainant to pay the amount knowing fully well that the proposal would not be materialised. Moreover, the petitioners for no valid reason refused to have received the amount and/or refund it as agreed. The submission of Mr.Mundargi, learned senior counsel that the ingredients, constituting offence under section 420 of I.P.C., do not exists cannot be accepted at this stage. The acts of petitioner-accused prima facie show that the accused cheated the complainant. In the circumstances this writ petition is dismissed. The trial Court shall decide the case on its own merits and uninfluenced by the observations made in this order.

(D.B.Bhosale, J.)